FILE COPY

FILED
AUG 30 1948
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1948

No. 122

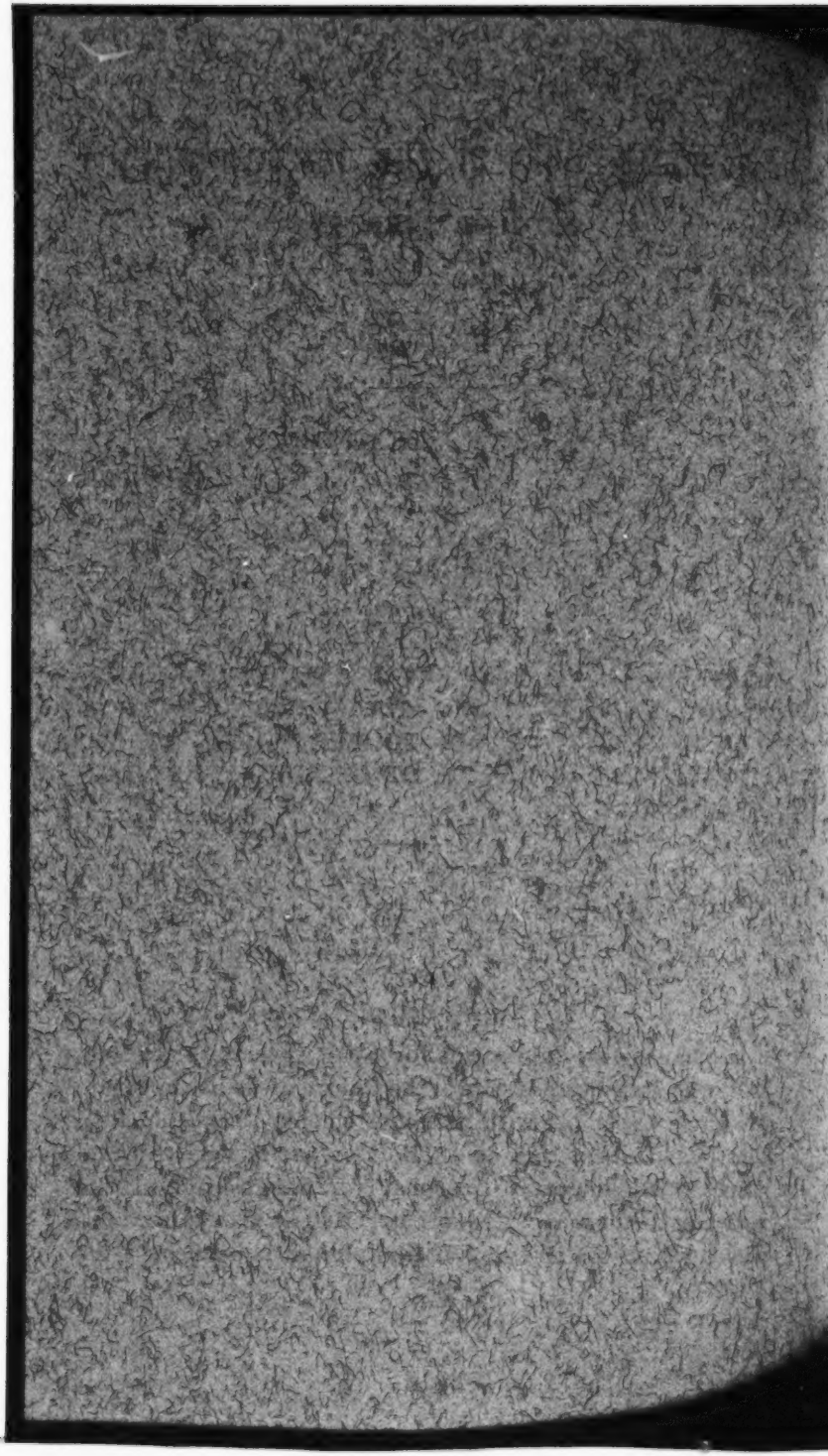
GEORGIE BRAGON,
Petitioner,

vs.

GUY J. D'ANTONIO

RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

Moses C. Schantz,
L. R. Wertheimer,
Counsel for Respondent.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 122

GEORGIE REAGON,

Petitioner,

vs.

GUY J. D'ANTONIO

BRIEF ON BEHALF OF GUY J. D'ANTONIO IN SUPPORT OF OPPOSITION TO APPLICATION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA.

MAY IT PLEASE THE COURT:

I

Jurisdiction

In opposing the application for a writ of certiorari herein, relator is first impressed with the failure of the issue herein presented to comply with the requirements of Rule 38, Section 5 and subsection (a). Relator can conceive of no "Special and important reasons" for the granting of this writ nor is there a "Federal question of substance" involved within the meaning of this phrase as defined by the

Court; *Magnum Import Co.* v. *Coty,* 43 Sup. Ct. Rep., P. 531, 262 U. S. 159; Rule 38 of Revised Rules of the Supreme Court, 275 U. S. 622, Paragraph 5 at Page 624; Act of February 13th, 1925, 43 Stat. 936, and for particularization thereof presents:

1. The Housing and Rent Act of 1948 is temporary emergency legislation which will expire before any substantial effect (even assuming, *arguendo,* that there could be an effect of substance), could possibly flow from a review of this cause by this Court. Except as to the two individual litigants herein involved, the subject will become moot almost as soon as it is decided and thus lacks completely any question of substance of a national character.

2. Even under the "spirit" of the act, the evils to be eliminated, and the National Emergency therein recognized, this matter presents no question of "substance" as *no actual evictions are involved:*

(a) The original judgment of the trial court, in terms, merely canceled the master lease of the present "applicant" to the three (3) apartments *not* occupied by her, leaving her in full possession and tenancy of her own living quarters, (2300 Ursulines Avenue, Upper), and

(b) As to the remaining three apartments, the judgment merely granted the "constructive possession" thereof to relator *without* the right to evict any of the actual subtenants in possession. (Transcript of Record —Page 7—Judgment of the First City Court of New Orleans, which on appeal was merely "affirmed" without change in verbiage. Transcript of Record—Page 13—Folio 17—Judgment of the Court of Appeal for the Parish of Orleans).

The actual effect of this judgment is therefore to evict no one, but merely to eliminate the "Relator" as a middle-

man in a purely commercial venture of buying living space at a minimum rate and reselling it at the maximum, at the expense of the landlord. No such commercial ventures ever were within the purview of either the "Price Control Act" or the "Housing and Rent Act" and its several amendments, and the application should be denied for complete failure of a "question of substance" and utter lack of any "special and important reason" for its granting.

II

Merits

While there are a number of debatable inaccuracies of both law and facts set forth in appellant's petition for review and accompanying brief, which are readily apparent by reference to the pleadings, exhibits, statement of facts and statute involved, we feel in the interest of brevity, that these may be pretermitted *arguendo*, in view of appellant's expressed willingness to submit the matter for review upon the sole issue of the proper legal interpretation of Paragraph (1) & (B), Subsection A of Section 209 of the Housing and Rent Act of 1947, Public Law 129, 80th Congress.

In order to promptly simplify, for the Court's consideration, what might otherwise appear as an involved situation, and to permit the Court to quickly determine whether this issue warrants Supreme Court intervention, or whether, as we urge, the writs should be denied, the issue having been twice heard and twice correctly solved, in addition to writs being refused by the Supreme Court of Louisiana, we submit the following:

Section 209, subsection A, Paragraph 5, deals, in terms, with *"non-housekeeping"* accommodations. The pleadings and statement of fact confirm the "housekeeping" nature of the accommodations (Transcript, pp. 2, 5, 15, 16, 17).

Nowhere, since the inception of this proceeding, has relator contended that his right of possession depended in the remotest degree on the non-housekeeping nature of the accommodations. The injection of this issue is but a "red herring" across the trail.

The sole issue, as we see it, involves the following section (Housing and Rent Act of 1948):

> "Sec. 209: (a) No action to recover possession of any controlled housing accommodations shall be maintainable * * * unless—(1) *The Tenant* is * * * (B) * * * using such housing accommodations * * * for other than living or dwelling purposes." (Irrelevant matter deleted and emphasis ours.)

It is readily apparent from this quotation, and the trial and appellate courts have so decreed, that the plain intent of the statute was to make the *use* by the *tenant* the *criterion* for eviction. If the Tenant uses the accommodations for living or dwelling purposes, no eviction can be had, *but* if the *tenant* uses the accommodations for the *commercial* purpose of operating an apartment house, eviction may be had under state law and procedure. And this is also the general intent of the entire statute which, in its entirety, is limited to the protection of domestic tenants, excluding all commercial enterprises.

Congress has written into the present statute the very personal limitation that eviction is permissible whenever *"The Tenant is" "using such housing accommodations" "for other than living or dwelling purposes"*, thus explicitly eliminating from the purview of the act all commercial uses by the tenant, such as the one here involved, which is admittedly commercial in its inception, intention and operation. In fact, the statement of facts shows that *the property is not susceptible of personal use* by the appellant as it is divided into four separate and distinct apart-

ments with separate street entrances, separate baths and kitchens and separate utility installations and meters (Transcript, p. 17).

These facts, coupled with a marked distinction in the *wording* of the statute, render the only case cited by appellant completely inapposite here, *i.e.*, *May* v. *Demont*, 186 N. Y. Supp. 113.

While the New York statute is not quoted in the decision, sufficient references thereto are found in the opinion to fix the point. In the opinion, on page 115, we find the following quotation, viz.:

> "When the Legislature used the words, "Occupied for dwelling purposes, etc."

The Court will readily distinguish between that verbiage,

"Occupied for Dwelling Purposes"

which deals only with the *occupancy*, disregarding entirely by *whom* occupied, and the verbiage of the present statute,

> *"The Tenant * * * is using such housing accommodations * * * for other than living or dwelling purposes.",*

which limits the use or occupancy to the tenant.

Additionally, the facts in the *May* case are entirely different from those in the case at bar. There, it was a *single house* of 16 rooms where rooms were rented out within the household. Here, we have *no household* but a building composed of separate and distinct housekeeping units, as distinct as though they were in separate buildings, with separate entrances, baths, kitchens and utilities (Transcript p. 17), an entirely different situation from a single home where the roomers are almost part of one family. There, the tenant might claim it as a *home*, and certainly it was "occupied for dwelling purposes"; but here, the best the

tenant can do is to claim it as her *business* and certainly it is not occupied *by the tenant* for dwelling purposes as required by the instant statute.

We therefore respectfully submit that the application for a writ of certiorari should be denied for the reason that there are no "special and important reasons" for the granting of same nor is there a "Federal question of substance" involved and for the further reason that the applicable statute has been correctly interpreted and applied by the trial and appellate courts.

Respectfully submitted,

Moses C. Scharff &
L. R. Wertheimer,
Attorneys for Appellee & Opponent in Writ;
404 Marine Building,
New Orleans, Louisiana.

(8069)